



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **26.11.2019**

CORAM :

THE HONOURABLE Ms.JUSTICE **P.T.ASHA**

C.M.P. (MD) No.9217 of 2019

in

SA(MD) No.SR65633 of 2019

and

CMP (MD) No.SR65635 of 2019

in C.M.P. (MD) No.9217 of 2019

N.Selvaraj

... Petitioner

vs.

1.Maria Selvi

2.Sekhar

3.A.Ramesh

4.A.Mahesh

(RR2 TO 4 Represented through Power agent and Mother R1)

5.Maria Shanthi

6.Maria Glory

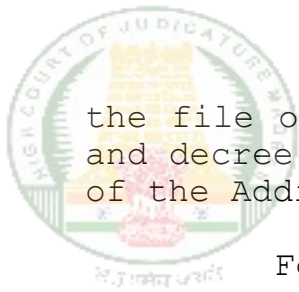
7.Maria Saratha

8.Maria Rabila

... Respondents

PRAYER in C.M.P. (MD) No.9217 of 2019 :- Civil Miscellaneous Petition filed under Order 41 Rule 3A of the Code of Civil Procedure, to condone the delay of 2095 days in filing the second appeal as against the judgment and decree passed in A.S.No.4 of 2013 on the file of the Sub Court, Padmanabhapuram dated 19.09.2013 confirming the judgment and decree passed in O.S.No.230 of 2010 on the file of the Additional District Munsif Court, Padmanabhapuram dated 06.12.2012.

PRAYER in SA(MD) No.SR65633 of 2019:- This appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree dated 19.09.2013 passed in A.S.No.4 of 2013 on



the file of the Sub Court, Padmanabhapuram, confirming the judgment and decree dated 06.12.2012 passed in O.S.No.230 of 2010 on the file of the Additional District Munsif Court, Padmanabhapuram.

For Petitioner : Mr.A.Sankaramasubramanian
For R1 to R4 : Mr.R.Vijayakumar

ORDER

The above miscellaneous petition is filed for condoning the delay of 2095 days in filing the second appeal against the judgment and decree in A.S.No.4 of 2013 on the file of the Sub Court, Padmanabhapuram.

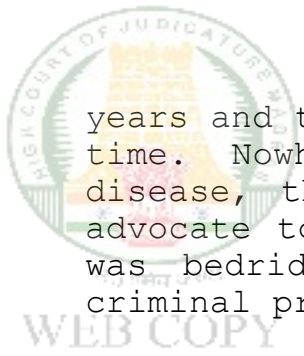
2.The reason given for the delay in the affidavit filed in support of this petition is as follows:

3.It is submitted that immediately after that judgment and decree of the lower appellate Court my counsel was not informed the same to me. Moreover I was suffered from Cerebral Vascular Disease (Stroke) for the past 6 years. Except myself none of my family members known about the proceedings of the said appeal. Therefore, no one can take care of the said case to proceed further to prefer appeal within a stipulated time. In these circumstances, I am not able to prefer the present second appeal within stipulated period.

3.The petitioner has filed documents, which is said to be his medical records. Even the documents do not inspire any confidence in this Court, since the alleged certificates do not appear to be one issued by a registered Medical Officer. Further, the other documents do not even contain the seal of either the Hospital or the Medical Officer and are mere prescriptions.

4.A counter has been filed by the 2nd respondent stating that the details given in paragraph No.3 of the affidavit filed in support of this petition are absolutely false. He would contend that after the disposal of the suit O.S.No.114 of 2010, a compound wall which was put up by them was demolished illegally by the petitioner and his men, for which, a police complaint was lodged and a charge sheet was laid before the Judicial Magistrate Court, Padmanabhapuram, on the petitioner and others.

5.The charge sheet was taken on file on 11.04.2016 and the petitioner was regularly appearing for every hearing before the criminal Court and the judgment and decree in A.S.No.4 of 2013 was passed on 19.09.2013. From the counter, it appears that the criminal complaint had been filed even before the judgment was passed in A.S.No.4 of 2013. The petitioner, who has been regularly attending the criminal Court, now comes forward with an affidavit to plea that he had suffered a Cerebral Vascular Disease for the past 6



years and that therefore, he was unable to file the second appeal in time. Nowhere in the affidavit, it is stated that on account of the disease, the petitioner was not able to attend the office of the advocate to make arrangements to file the second appeal on that he was bedridden. Further, the petitioner has been attending the criminal proceedings.

6.From the above, this Court finds that the petitioner has not come forward with the truth and I do not find sufficient cause to condone the delay of 2095 days.

7.In the result, this Civil Miscellaneous Petition is dismissed and the second appeal is also rejected at the SR stage itself. No costs.

Sd/-

Assistant Registrar (CS III)

// True Copy //

Sub Assistant Registrar(CS)

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To

1.The Subordinate Judge,
Padmanabhapuram.

2.The Additional District Munsif,
Padmanabhapuram.

+1CC TO MR.R.VIJAYAKUMAR, ADVOCATE, SR NO.101643

C.M.P. (MD) No.9217 of 2019
in
SA(MD) No.SR65633 of 2019
and
SA(MD) No.SR65633 of 2019

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